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Counterclaimant Battens Plus, Inc.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

DIVERSI-PLAST PRODUCTS, INC., a
Minnesota Corporation,

Plaintiff,

v.

BATTENS PLUS, INC., a California
Corporation,

Defendant.

AND RELATED COUNTERCLAIMS

Case No. 2:04CV01005 PGC

**DECLARATION OF MICHAEL S.
WILCOX IN SUPPORT OF
DEFENDANT'S MOTIONS FOR
SUMMARY JUDGMENT**

I, MICHAEL S. WILCOX, declare as follows:

1. I am an attorney with the law firm of McDonough Holland & Allen PC, counsel of record for Battens Plus, Inc. and admitted *pro hac vice* before this Court. I make this declaration of my own personal knowledge and/or based on my review of the records in this matter. If called as a witness, I could and would competently testify as to each stated

fact. This declaration is submitted in support of Battens Plus, Inc.'s Motions for Summary Judgment.

2. Attached hereto as **Exhibit A** is a true and correct copy of Diversi-Plast Products, Inc.'s Response to Defendants First Set of Request for Admissions.

3. Attached hereto as **Exhibit B** is a true and correct copy of Diversi-Plast Products, Inc.'s Response to Defendants First Set of Interrogatories.

4. Attached hereto as **Exhibit C** is a true and correct copy of the United States Patent No. 6,357,193 B1 ("the '193 patent").

5. Attached hereto as **Exhibit D** is a true and correct copy of Diversi-Plast, Inc.'s "Reissue Application Declaration by the Inventor under 37 C.F.R. §§" dated June 28, 2004 and submitted to the U.S. Patent and Trademark Office in the pending reissue / reexamination proceeding.

6. Attached hereto as **Exhibit E** is a true and correct copy of Diversi-Plast, Inc.'s "Consent of Assignee to Reissue and Statement under 37 C.F.R §3.73(b)" dated June 28, 2004 and submitted to the U.S. Patent and Trademark Office in the pending reissue / reexamination proceeding.

7. Attached hereto as **Exhibit F** are true and correct copies of relevant portions of the deposition testimony of Theodore Joseph Bielen taken on January 19, 2006.

8. Attached hereto as **Exhibit G** is a true and correct copy of the U.K. Patent Application GB 2,062,056A.

9. Attached hereto as **Exhibit H** is a true and correct copy of an Information Disclosure Statement filed with the U.S. Patent and Trademark Office by Diversi-Plast on March 14, 2005 in the pending reissue / reexamination proceedings. This document states that U.K. Patent Application GB 2,062,056A ("the '056 application") is a prior art reference to the '193 patent and that the '056 application was published on May 20, 1981. Exhibit H also attached a copy of the '056 application. Exhibit G of this declaration is a true and correct copy of that prior art document.

10. Attached hereto as **Exhibit I** is a true and correct copy of the United States Patent No. 5,304,095.

11. Attached hereto as **Exhibit J** are true and correct copies of relevant portions of the deposition testimony of Lars J. Walberg taken on January 13, 2006.

12. Attached hereto as **Exhibit K** is a true and correct copy of a drawing representing a circa 1998 soffit vent sold by Diversi-Plast. This drawing was created by Richard J. Morris during his deposition and is Deposition Exhibit number 42.

13. Attached hereto as **Exhibit L** are true and correct copies of relevant portions of the deposition testimony of Richard J. Morris taken on November 18, 2005.

14. Attached hereto as **Exhibit M** is a true and correct copy of the Reissue Application for U.S. Patent No. 6,357,193 B1 ("the '193 patent") dated March 19, 2004 consisting of a Reissue Application Transmittal Letter, a copy of the '193 patent and a Preliminary Amendment.

15. Attached hereto as **Exhibit N** is a true and correct copy of an Office Action Summary from the reissue proceedings for the '193 patent dated April 19, 2005.

16. Attached hereto as **Exhibit O** is a true and correct copy of an "Amendment in Response to Office Action of 19 April 1995" from the reissue proceedings for the '193 patent.

17. Attached hereto as **Exhibit P** is a true and correct copy of the Request for Reexamination under 35 U.S. C § 302 pertaining to the '193 patent dated March 29, 2005.

18. Attached hereto as **Exhibit Q** is a true and correct copy of the Decision, *Sua Sponte*, to Merge Reissue and Reexamination Proceedings dated July 13, 2005 and issued in the reissue / reexamination proceedings for the '193 patent.

19. Attached hereto as **Exhibit R** is a true and correct copy of an Office Action Summary from the reissue proceedings for the '193 patent dated November 11, 2005.

20. Attached hereto as **Exhibit S** is a true and correct copy of an "Amendment to 22 November 2005 Office Action" from the reissue / reexamination proceedings for the '193 patent.

21. Attached hereto as **Exhibit T** is a true and correct copy of a "Consent of Assignee to Correct Inventorship and Statement under 37 C.F.R. §3.73(b)" submitted by Diversi-Plast in the reissue / reexamination proceedings for the '193 patent.

22. Attached hereto as **Exhibit U** is a true and correct copy of the "Rebuttal Report of Steve Carpenter Regarding Validity of U.S. Patent No. 6,357,193" served by Diversi-Plast in the above captioned action.

23. Attached hereto as **Exhibit V** are true and correct copies of relevant portions of the deposition testimony of Gary Urbanski, Rule 30(b)(6) witness on behalf of Diversi-Plast, taken on November 17, 2005.

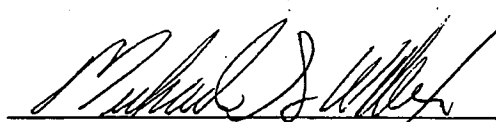
24. Attached hereto as **Exhibit W** is a true and correct copy of a Diversi-Plast memorandum dating from approximately 1998 and Bates labeled DP 00918.

25. Attached hereto as **Exhibit X** is a true and correct copy of the ICC Evaluation Services, Inc. report certifying Battens Plus' BattenUp product, issued December 1, 2003.

26. Attached hereto as **Exhibit Y** is a true and correct copy of an "Amendment Responsive to 19 July 2005 Sua Sponte Decision to Merge Reissue and Reexamination Proceedings" filed in the reissue / reexamination proceedings for the '193 patent.

27. Attached hereto as **Exhibit Z** is a true and correct copy of the Notice of Deposition Under Fed. R. Civ. P. 30(b)(6) and Subpoena Duces Tecum of Inteplast Corporation, dba Inteplast Group, Ltd., LP issued by Diversi-Plast on November 29, 2005 in the above captioned action.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. This declaration is executed on March 31, 2006 at Sacramento, California.


MICHAEL S. WILCOX